

2001 ASSEMBLY BILL 11

January 16, 2001 – Introduced by Representatives LADWIG, FREESE, KRAWCZYK, McCORMICK, STARZYK, GROTHMAN, HAHN, HOVEN, JESKEWITZ, KESTELL, F. LASEE, MONTGOMERY, NASS, STONE, TOWNSEND, URBAN, VRAKAS, WADE and OTT, cosponsored by Senators HUELSMAN and SCHULTZ. Referred to Committee on Campaigns and Elections.

1 **AN ACT to amend** 6.22 (2) (b), 6.22 (5), 6.24 (4) (d), 6.24 (7), 6.85, 6.86 (1) (b), 6.87
 2 (2), 6.87 (3) (d), 6.87 (4), 6.875 (6), 6.88 (1), 6.88 (3) (a), 6.88 (3) (b), 7.51 (3) (d)
 3 and 9.01 (1) (b) 2. of the statutes; **relating to:** absentee voting.

Analysis by the Legislative Reference Bureau

Under current law, any qualified elector who for any reason is unable or unwilling to vote at a polling place may vote absentee. An elector who votes absentee must complete a certification before a witness indicating that the elector is qualified to vote the absentee ballot and that the elector has voted the absentee ballot in the manner prescribed by law. Under current law, the witness for any overseas or military elector must be an adult U.S. citizen.

This bill deletes the requirement that an elector voting absentee must complete a certification before one witness and, instead, requires an elector to complete a certification before two witnesses or swear an affidavit before a person who is authorized to administer oaths. For any overseas or military elector, these witnesses must be adult U.S. citizens. The bill also permits a qualified elector to obtain an absentee ballot only if the elector will be absent from the municipality in which he or she is qualified to vote on election day or cannot appear at the appropriate polling place because of age, sickness, handicap, physical disability, jury duty, service as an

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election official, or religious reasons. Under the bill, no elector under the age of 70 may qualify to obtain an absentee ballot solely because of age.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 6.22 (2) (b) of the statutes is amended to read:

2 6.22 (2) (b) Notwithstanding s. 6.87 (4), a military elector shall make and
3 subscribe to the certification affidavit under s. 6.87 (2) before ~~a witness who is an~~
4 ~~adult U.S. citizen~~ any person authorized to administer oaths or shall make and
5 subscribe to the certification under s. 6.87 (2) before 2 witnesses who are adult U.S.
6 citizens.

7 **SECTION 2.** 6.22 (5) of the statutes is amended to read:

8 6.22 (5) VOTING PROCEDURE. Except as authorized in s. 6.25, the ballot shall be
9 marked or punched and returned, deposited and recorded in the same manner as
10 other absentee ballots. In addition, the certification or affidavit under s. 6.87 (2)
11 shall have a statement of the elector's birth date. Failure to return any unused
12 ballots in a primary election does not invalidate the ballot on which the elector casts
13 his or her votes.

14 **SECTION 3.** 6.24 (4) (d) of the statutes is amended to read:

15 6.24 (4) (d) An overseas elector who is not registered may request both a
16 registration form and an absentee ballot at the same time, and the municipal clerk
17 shall send the ballot automatically if the registration form is received within the time
18 prescribed in s. 6.28 (1). The board shall prescribe a special ~~certificate~~
19 certificate-affidavit form for the envelope in which the absentee ballot for overseas
20 electors is contained, which shall be substantially similar to that provided under s.
21 6.87 (2). Notwithstanding s. 6.87 (4), an overseas elector shall make and subscribe

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1 to the special certificate form before ~~a witness who is an adult U.S. citizen~~ 2
2 witnesses who are adult U.S. citizens or shall make and subscribe to the special
3 affidavit before any person authorized to administer oaths.

4 **SECTION 4.** 6.24 (7) of the statutes is amended to read:

5 6.24 (7) VOTING PROCEDURE. Except as authorized under s. 6.25, the ballot shall
6 be marked or punched and returned, deposited and recorded in the same manner as
7 other absentee ballots. In addition, the ~~certificate~~ certificate-affidavit shall have a
8 statement of the elector's birth date. Failure to return the unused ballots in a
9 primary election does not invalidate the ballot on which the elector casts his or her
10 votes.

11 **SECTION 5.** 6.85 of the statutes is amended to read:

12 **6.85 Absent elector; definition.** An absent elector is any otherwise qualified
13 elector who ~~for any reason is unable or unwilling to, for any reason, is or expects to~~
14 be absent from the municipality in which the absent elector is a qualified elector on
15 election day, or who, because of age, sickness, handicap, physical disability, jury duty,
16 service as an election official, or religious reasons cannot appear at the polling place
17 in his or her ward or election district. No person under the age of 70 qualifies as an
18 absent elector solely because of age. Any otherwise qualified elector who changes
19 residence within this state by moving to a different ward or municipality later than
20 10 days prior to an election may vote an absentee ballot in the ward or municipality
21 where he or she was qualified to vote before moving. An elector qualifying under this
22 section may vote by absentee ballot under ss. 6.86 to 6.89.

23 **SECTION 6.** 6.86 (1) (b) of the statutes is amended to read:

24 6.86 (1) (b) Except as provided in this section, if application is made in writing,
25 the application, signed by the elector, shall be received no later than 5 p.m. on the

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1 Friday immediately preceding the election. If application is made in person, the
2 application shall be made no later than 5 p.m. on the day preceding the election. If
3 the elector is making written application and the application indicates that the
4 reason for requesting an absentee ballot is that the elector is a sequestered juror, the
5 application shall be received no later than 5 p.m. on election day. If the application
6 is received after 5 p.m. on the Friday immediately preceding the election, the
7 municipal clerk or the clerk's agent shall immediately take the ballot to the court in
8 which the elector is serving as a juror and deposit it with the judge. The judge shall
9 recess court, as soon as convenient, and give the elector the ballot. The judge shall
10 then ~~witness the voting procedure~~ notarize the affidavit as provided in s. 6.87 and
11 shall deliver the ballot to the clerk or agent of the clerk who shall deliver it to the
12 polling place as required in s. 6.88. If application is made under sub. (2), the
13 application may be received no later than 5 p.m. on the Friday immediately
14 preceding the election.

15 **SECTION 7.** 6.87 (2) of the statutes is amended to read:

16 **6.87 (2)** Except as authorized under sub. (3) (d), the municipal clerk shall place
17 the ballot in an unsealed envelope furnished by the clerk. The envelope shall have
18 the name, official title and post-office address of the clerk upon its face. The other
19 side of the envelope shall have a printed ~~certificate~~ certificate-affidavit in
20 substantially the following form:

21 [STATE OF

22 County of]

23 or

24 [(name of foreign country and city or other jurisdictional unit)]

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1 I,, (certify) (do solemnly swear) subject to the penalties of s. 12.60 (1) (b), Wis.
2 Stats., for false statements, that I am a resident of the [... ward of the] (town) (village)
3 of, or of the aldermanic district in the city of, residing at in said city, the
4 county of, state of Wisconsin, and am entitled to vote in the (ward) (election
5 district) at the election to be held on; that I am not voting at any other location
6 in this election; that I ~~am unable or unwilling to~~ cannot appear at the polling place
7 in the (ward) (election district) on election day because I expect to be absent from the
8 municipality or because of age, sickness, handicap, physical disability, religious
9 reasons, jury duty, or service as an election official, or because I have changed my
10 residence within the state from one ward or election district to another within 10
11 days before the election. An elector who provides an identification serial number
12 issued under s. 6.47 (3) need not provide a street address. I (certify) (swear) that I
13 exhibited the enclosed ballot unmarked to the ~~witness~~ (2 witnesses) (person
14 administering the oath), that I then in (their) (his) (her) presence and in the presence
15 of no other person marked the ballot and enclosed and sealed the same in this
16 envelope in such a manner that no one but myself and any person rendering
17 assistance under s. 6.87 (5), Wis. Stats., if I requested assistance, could know how I
18 voted.

19 Signed

20 Identification serial number, if any:

21 The ~~witness~~ (2 witnesses) (person administering the oath) shall execute either
22 of the following, as appropriate:

23 I We, the undersigned ~~witness~~ witnesses, subject to the penalties of s. 12.60 (1)
24 (b), Wis. Stats., for false statements, certify that the above statements are true and
25 the voting procedure was executed as there stated. I ~~am not~~ Neither of us is a

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1 candidate for any office on the enclosed ballot (except in the case of an incumbent
2 municipal clerk). I We did not solicit or advise the elector to vote for or against any
3 candidate or measure.

4(Name)

5(Address)

6(Name)

7(Address)

8 Subscribed and sworn to before me this day of, A.D.,, and I hereby
9 certify that I am not a candidate on the ballot upon which the affiant voted (unless
10 I am an incumbent municipal clerk), that the voting procedure above was executed
11 as therein stated, and that I did not solicit or advise the affiant to vote for or against
12 any candidate or measure.

13(Name)

14(Title)

15(State or nation)

16 **SECTION 8.** 6.87 (3) (d) of the statutes is amended to read:

17 6.87 (3) (d) Unless a municipality uses an electronic voting system that
18 requires an elector to punch a ballot in order to record the elector’s votes, a municipal
19 clerk of a municipality may, if the clerk is reliably informed by an absent elector of
20 a facsimile transmission number or electronic mail address where the elector can
21 receive an absentee ballot, transmit a facsimile or electronic copy of the absent
22 elector’s ballot to that elector in lieu of mailing under this subsection if, in the
23 judgment of the clerk, the time required to send the ballot through the mail may not
24 be sufficient to enable return of the ballot by the time provided under sub. (6). An
25 elector may receive an absentee ballot under this subsection only if the elector has

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1 filed a valid application for the ballot under sub. (1). If the clerk transmits an
2 absentee ballot under this paragraph, the clerk shall also transmit a facsimile or
3 electronic copy of the text of the material that appears on the ~~certificate~~
4 certificate-affidavit envelope prescribed in sub. (2), together with instructions
5 prescribed by the board. The instructions shall require the absent elector to make
6 and subscribe to the affidavit or the certification as required under sub. (4) and to
7 enclose the absentee ballot in a separate envelope contained within a larger
8 envelope, that shall include the completed ~~certificate~~ certificate-affidavit. The
9 elector shall then mail the absentee ballot with postage prepaid to the municipal
10 clerk. An absentee ballot received under this paragraph shall not be counted unless
11 it is cast in the manner prescribed in this paragraph and in accordance with the
12 instructions provided by the board.

13 **SECTION 9.** 6.87 (4) of the statutes is amended to read:

14 6.87 (4) Except as otherwise provided in s. 6.875, the elector voting absentee
15 shall make and subscribe to the affidavit before a person authorized to administer
16 oaths or make and subscribe to the certification before ~~one witness~~ 2 witnesses. The
17 absent elector, in the presence of the ~~witness~~ administrator of the oath or the 2
18 witnesses, shall mark or punch the ballot in a manner that will not disclose how the
19 elector's vote is cast. The elector shall then, still in the presence of the ~~witness~~
20 administrator of the oath or the 2 witnesses, fold the ballots if they are paper ballots
21 so each is separate and so that the elector conceals the markings thereon and deposit
22 them in the proper envelope. If a consolidated ballot under s. 5.655 is used, the
23 elector shall fold the ballot if it is a paper ballot so that the elector conceals the
24 markings thereon and deposit the ballot in the proper envelope. The elector may
25 receive assistance under sub. (5). The return envelope shall then be sealed. The

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1 witness administrator of the oath or the 2 witnesses may not be a candidate. The
2 envelope shall be mailed by the elector, postage prepaid, or delivered in person, to the
3 municipal clerk issuing the ballot or ballots. Failure to return an unused ballot in
4 a primary does not invalidate the ballot on which the elector's votes are cast. Return
5 of more than one marked or punched ballot in a primary or return of a ballot prepared
6 under s. 5.655 or a ballot used with an electronic voting system in a primary which
7 is marked or punched for candidates of more than one party invalidates all votes cast
8 by the elector for candidates in the primary.

9 **SECTION 10.** 6.875 (6) of the statutes is amended to read:

10 6.875 (6) Special voting deputies in each municipality shall, not later than 5
11 p.m. on the Friday preceding an election, arrange one or more convenient times with
12 the administrator of each nursing home or qualified retirement home and qualified
13 community-based residential facility in the municipality from which one or more
14 occupants have filed an application under s. 6.86 to conduct absentee voting for the
15 election. The time may be no earlier than the 4th Monday preceding the election and
16 no later than 5 p.m. on the Monday preceding the election. Upon request of a relative
17 of an occupant of a nursing home or qualified retirement home or qualified
18 community-based residential facility, the administrator may notify the relative of
19 the time or times at which special voting deputies will conduct absentee voting at the
20 home or facility, and permit the relative to be present in the room where the voting
21 is conducted. At the designated time, 2 deputies appointed under sub. (4) shall visit
22 the nursing home or qualified retirement home or qualified community-based
23 residential facility. The municipal clerk or executive director of the board of election
24 commissioners shall issue a supply of absentee ballots to the deputies sufficient to
25 provide for the number of valid applications received by the clerk, and a reasonable

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1 additional number of ballots. The municipal clerk or executive director shall keep
2 a careful record of all ballots issued to the deputies and shall require the deputies to
3 return every ballot issued to them. The deputies shall personally offer each elector
4 who has filed a proper application the opportunity to cast his or her absentee ballot.
5 If an elector is present who has not filed a proper application, the 2 deputies may
6 accept an application from the elector and shall issue a ballot to the elector if the
7 elector is qualified and the application is proper. The deputies shall administer the
8 oath and may, upon request of the elector, assist the elector in marking or punching
9 the elector's ballot. Upon request of the elector, a relative of the elector who is present
10 in the room may assist the elector in marking or punching the elector's ballot. All
11 voting shall be conducted in the presence of the deputies. No individual other than
12 a deputy may administer the oath and no individual other than a deputy or relative
13 of an elector may render voting assistance to the elector. Upon completion of the
14 voting, the deputies shall promptly deliver, either personally or by 1st class mail, any
15 absentee ballot applications and the sealed ~~certificate~~ certificate-affidavit envelope
16 containing each ballot to the clerk or board of election commissioners of the
17 municipality in which the elector casting the ballot resides, within such time as will
18 permit delivery to the polling place serving the elector's residence on election day.
19 Personal delivery may be made by the deputies no later than noon on election day.
20 If a qualified elector is not able to cast his or her ballot on 2 separate visits by the
21 deputies to the nursing home or qualified retirement home, they shall so inform the
22 municipal clerk or executive director of the board of election commissioners, who may
23 then send the ballot to the elector no later than 5 p.m. on the Friday preceding the
24 election.

25 **SECTION 11.** 6.88 (1) of the statutes is amended to read:

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1 **6.88 (1)** When an absentee ballot arrives at the office of the municipal clerk,
2 the clerk shall enclose it, unopened, in a carrier envelope which shall be securely
3 sealed and endorsed with the name and official title of the clerk, and the words “This
4 envelope contains the ballot of an absent elector and must be opened at the polls
5 during polling hours on election day”.” If the ballot was received by facsimile
6 transmission or electronic mail and is accompanied by a separate certificate or
7 affidavit, the clerk shall enclose the ballot in a ~~certificate~~ certificate–affidavit
8 envelope and securely append the completed certificate or affidavit to the outside of
9 the envelope before enclosing the ballot in the carrier envelope. The clerk shall keep
10 the ballot in the clerk’s office until delivered, as required in sub. (2).

11 **SECTION 12.** 6.88 (3) (a) of the statutes is amended to read:

12 **6.88 (3)** (a) Any time between the opening and closing of the polls on election
13 day, the inspectors shall open the carrier envelope only, and announce the name of
14 the absent elector or the identification serial number of the absent elector if the
15 elector has a confidential listing under s. 6.47 (2). When the inspectors find that the
16 certification or affidavit has been properly executed, the applicant is a qualified
17 elector of the ward or election district, and the applicant has not voted in the election,
18 they shall enter an indication on the poll or registration list next to the applicant’s
19 name indicating an absentee ballot is cast by the elector. They shall then open the
20 envelope containing the ballot in a manner so as not to deface or destroy the affidavit
21 or certification thereon. The inspectors shall take out the ballot without unfolding
22 it or permitting it to be unfolded or examined. Unless the ballot is cast under s. 6.95,
23 the inspectors shall verify that the ballot has been endorsed by the issuing clerk. The
24 inspectors shall deposit the ballot into the proper ballot box and enter the absent

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1 elector's name or voting number after his or her name on the poll or registration list
2 the same as if the elector had been present and voted in person.

3 **SECTION 13.** 6.88 (3) (b) of the statutes is amended to read:

4 6.88 (3) (b) When the inspectors find that ~~a~~ an affidavit or certification is
5 insufficient, that the applicant is not a qualified elector in the ward or election
6 district, that the ballot envelope is open or has been opened and resealed, that the
7 ballot envelope contains more than one ballot of any one kind or that the certificate
8 or affidavit of an elector who received an absentee ballot by facsimile transmission
9 or electronic mail is missing, or if proof is submitted to the inspectors that an elector
10 voting an absentee ballot has since died, the inspectors shall not count the ballot.
11 The inspectors shall endorse every ballot not counted on the back, "rejected (giving
12 the reason)". The inspectors shall reinsert each rejected ballot into the certificate
13 envelope in which it was delivered and enclose the ~~certificate~~ envelopes and ballots,
14 and securely seal the ballots and envelopes in an envelope marked for rejected
15 absentee ballots. The inspectors shall endorse the envelope, "rejected ballots" with
16 a statement of the ward or election district and date of the election, signed by the chief
17 inspector and one of the inspectors representing each of the 2 major political parties
18 and returned to the municipal clerk in the same manner as official ballots voted at
19 the election.

20 **SECTION 14.** 7.51 (3) (d) of the statutes is amended to read:

21 7.51 (3) (d) All absentee ~~certificate~~ certificate–affidavit envelopes which have
22 been opened shall be returned by the inspectors to the municipal clerk in a securely
23 sealed carrier envelope which is clearly marked "used absentee ~~certificate~~
24 certificate–affidavit envelopes". The envelopes shall be signed by the chief inspector
25 and 2 other inspectors. Except when the ballots are used in a municipal or school

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1 district election only, the municipal clerk shall transmit the used envelopes to the
2 county clerk.

3 **SECTION 15.** 9.01 (1) (b) 2. of the statutes is amended to read:

4 9.01 (1) (b) 2. The board of canvassers shall then examine the absentee ballot
5 envelopes. Any defective absentee ballot envelopes shall be laid aside, properly
6 marked and carefully preserved. The number of voters shall be reduced by the
7 number of ballot envelopes set aside under this subdivision. An absentee ballot
8 envelope is defective only if it is not properly sworn or witnessed or, if it is not signed
9 by the voter, if the affidavit supporting the absentee ballot envelope has such a
10 number of technical errors that the board of canvassers is doubtful of the legal effect
11 of the affidavit, or if the certificate or affidavit accompanying an absentee ballot that
12 the voter received by facsimile transmission or electronic mail is missing.

13 **SECTION 16. Initial applicability.**

14 (1) This act first applies to absentee ballots distributed to electors for the 2002
15 September primary election.

16 (END)